

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

SCOTTY SLY, SR.	:	Case No. 3:19-cv-00257
	:	
Plaintiff	:	Judge _____
	:	
v.	:	<b><u>NOTICE OF REMOVAL OF</u></b>
	:	<b><u>CIVIL ACTION</u></b>
SAM'S CLUB, INC.	:	
	:	
Defendant.	:	

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Defendant Sam's East, Inc., identified in the Complaint as Sam's Club, Inc., by and through counsel, and pursuant to 28 U.S.C. § 1446 and 28 U.S.C. § 1332, respectfully submits this Notice of Removal of Civil Action from the Montgomery County, Ohio Court of Common Pleas. In support of its Notice, Defendant states the following:

1.

On July 24, 2019, Plaintiff, Scotty Sly, Sr. (hereinafter "Plaintiff"), filed a complaint in the Court of Common Pleas, Montgomery County, Ohio and captioned *Scotty Sly, Sr. v. Sam's Club, Inc.* Case No. 2019CV03420. (A true and correct copy of the Complaint is attached hereto as Exhibit A). According to the state court docket, the Complaint was served on Defendant Sam's East, Inc. on July 25, 2019.

In the Complaint, Plaintiff Scotty Sly alleges that on August 6, 2017, he was injured as a result of a fall on the premises of Sam's East, Inc., located at 6955 Miller Lane, Dayton, Ohio. (See Complaint at ¶¶ 1-2). The Complaint alleges that Plaintiff suffered severe and permanent injuries, including injuries to his back; medical expenses in excess of \$40,538.78; pain and

suffering; and lost wages. (*See id.* at ¶ 6). Sam's Club, Inc. specifically denies any wrongdoing or civil liability to Plaintiff.

As noted above and asserted in his Complaint, Plaintiff is an Ohio citizen. (*See* Complaint). Sam's East, Inc., identified in the Complaint as Sam's Club, Inc., is a Delaware corporation whose principal place of business is Bentonville, Arkansas.

2.

This Notice of Removal is filed within thirty (30) days of service of the state court action and is therefore timely under 28 U.S.C. § 1446(b).

3.

The United States District Court for the Southern District of Ohio has diversity jurisdiction over this case pursuant to 28 U.S.C. § 1332. Removal is proper because:

(a) Plaintiff is an Ohio resident. (*See* Complaint);

(b) Defendant Sam's East, Inc., identified in the Complaint as Sam's Club, Inc., is a Delaware corporation. Its principal place of business is Bentonville, Arkansas. Sam's East, Inc. is not a resident of the state of Ohio.

(c) The amount in controversy in this case exceeds seventy-five thousand dollars (\$75,000).<sup>1</sup> Plaintiff has placed no limitation on his prayer for relief, which demands monetary damages in excess of \$25,000.<sup>2</sup> (*See* Complaint at Prayer for Relief.). While the Complaint is

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<sup>1</sup> As more fully set forth in Part 1 above, Plaintiff asserts that Defendant Sam's Club, Inc. is responsible for severe and permanent injuries, including injuries to his back; medical expenses in excess of \$40,538.78; pain and suffering; and lost wages. (*See* Complaint at ¶ 6). Moreover, counsel have discussed this case and Plaintiff has made a demand of \$136,654.91 and will not agree to stipulate that damages do not exceed \$75,000.

<sup>2</sup> *See, e.g., Sorenson v. Ashmore*, 4 F. Supp.2d 669, 670 (E.D. Tex. 1998) (holding that it was facially apparent from the prayer for relief in Plaintiff's Complaint that the amount in controversy exceeded \$75,000.00 where the Complaint merely sought an unspecified amount of attorneys' fees, actual damages, damages for emotional distress and punitive damages).

silent as to the particular amount in controversy, it is apparent that the amount in controversy exceeds the minimum jurisdictional amount based on the alleged injuries.

4.

Pursuant to 28 U.S.C. § 1446(d), written notice of the removal of this case (attached hereto as Exhibit B), together with a copy of this Notice of Removal is being filed with the Clerk of the Montgomery County, Ohio Court of Common Pleas and shall be served on Plaintiff. A copy of the Answer filed in state Court is attached hereto as Exhibit C.

WHEREFORE, Defendant prays that this action be removed from the Montgomery County, Ohio Court of Common Pleas to the United States District Court for the Southern District of Ohio, Western Division at Dayton, and requests that this Court assume full jurisdiction over the case herein as provided by law.

Respectfully submitted,

REMINER CO., L.P.A.

/s/ Adair M. Smith

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*Attorneys for Defendant Sam's East, Inc. identified in the  
Complaint as Sam's Club, Inc.*

**CERTIFICATE OF SERVICE**

A copy of the foregoing was mailed by regular U.S. mail and/or e-mail this 21<sup>st</sup> day of  
August, 2019:

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